

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PETERSON YAZZIE,

Petitioner,

v.

Case No. CV 18-1004 JCH/GBW
CR 14-2523 JCH/GBW-1

UNITED STATES OF AMERICA,

Respondent.

**ORDER ADOPTING MAGISTRATE JUDGE'S PROPOSED FINDINGS AND
RECOMMENDED DISPOSITION**

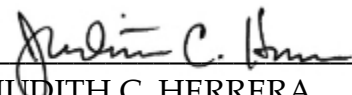
This matter comes before the Court on Petitioner's Motion to Vacate under 28 U.S.C. § 2255. *Doc. 1.*¹ Petitioner seeks to have his conviction and sentence set aside pursuant to the Supreme Court's decisions in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), and *Johnson v. United States*, 135 S. Ct. 2551 (2015). *See generally doc. 1.* The United States argues that *Dimaya* and *Johnson* do not impact Petitioner's conviction because his conviction is valid under 924(c)'s elements clause, Petitioner's motion is untimely under 28 U.S.C § 2255(f), and Petitioner waived his right to collaterally attack his sentence. *See generally doc. 5.*

The Magistrate Judge filed his Proposed Findings and Recommended Disposition (PFRD) on January 24, 2019. *Doc. 6.* He recommended denying Petitioner's

¹ Citations to "Doc." refer to docket numbers filed in the civil case. Citations to "Cr. Doc." refer to the attendant criminal docket.

motion, finding that the *Dimaya* and *Johnson* opinions do not affect his conviction because the predicate crime underpinning Petitioner's 924(c) conviction, assault with a dangerous weapon, qualifies as a 924(c) crime of violence under the elements clause definition, and therefore remains a valid predicate. *See doc. 6* at 4-5. Petitioner's objections to the PFRD were due February 21, 2019. He has filed none. Furthermore, upon review of the record, I concur with the Magistrate Judge's findings and recommendations.

Wherefore, IT IS HEREBY ORDERED that the Magistrate Judge's Proposed Findings and Recommended Disposition (*doc. 6*) is ADOPTED, and Petitioner's Motion to Vacate, Set Aside or Correct Sentence (*doc. 1*) is DENIED.



JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE